

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

DANIEL CONCEPCION,
Individually and on Behalf of All Those
Similarly Situated,

Plaintiffs,

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et. al.

Defendants.

) CIVIL NO. 3:22-cv-01017-ADC
)
) RE: CLASS ACTION COMPLAINT
) FOR VIOLATIONS OF ANTI-
) TRUST LAWS; VIOLATIONS OF
) FEDERAL AND PUERTO RICO
) WAGE AND HOUR LAWS;
) DECLARATORY RELIEF;
) VIOLATION OF
) CONSTITUTIONAL
) RIGHT TO EQUAL PROTECTION
)
) JURY TRIAL DEMANDED

**PLAINTIFF'S RESPONSE TO ORDER TO SHOW GOOD CAUSE REGARDING
SERVICE OF PROCESS ON THE BALTIMORE ORIOLES DEFENDANTS**

TO THE HONORABLE COURT:

COMES NOW plaintiff, David Conception, individually and on behalf of all those similarly situated, through the undersigned legal representation and STATES and PRAYS:

Baella & Baella
5563 Pedro Bigay St, Urb Ext Baldrich
San Juan, Puerto Rico 00918

MEMORANDUM

Pursuant to F. R. Civ. P. Rule 4(m) and this Court's April 18, 2022 Order (Docket No. 8), Plaintiff moves for allowance of service on the Baltimore Orioles Defendants. Plaintiff's counsel has served all defendants herein.

Timely Service on All Defendants Except the Baltimore Orioles Defendants

Defendants' counsel (for all MLB defendants except the Baltimore Orioles Defendants) accepted service on behalf of each of the defendants except the two (2) Baltimore Orioles Defendants on March 30, 2022 (Docket No. 5), i.e., within 90 days of January 11, 2022, when the Complaint (Docket No. 1) was filed. Defense counsel indicated, after consulting with the two Baltimore Orioles Defendants, that she could not accept service for them, and that Plaintiff's counsel would have to serve them separately. By the time Plaintiff's counsel learned that the two Baltimore Orioles Defendants would not agree to be served through the lead defendants' counsel (by waiver of the service of summons), the 90 days within which to serve them under F. R. Civ. P. Rule 4(m) had nearly elapsed.

Baltimore Orioles Defendants Are Personally Served

Plaintiff's lead counsel, Samuel Kornhauser, arranged to have the Baltimore Orioles, LP and the Baltimore Orioles, Inc. served individually. They were each served on April 25, 2022. (See Group Exhibit 1 attached hereto.) Plaintiff's counsel believes that the Baltimore Orioles defendants, like the other defendants, had knowledge that this Complaint had been filed, before they were actually served. Plaintiff's counsel therefore does not believe that the Baltimore Orioles Defendants have been prejudiced by the relatively short 14-day delay in effecting service.

Good Cause Exists for the Delay in Serving the Baltimore Orioles Defendants

The delay in service on the Baltimore Orioles Defendants was due to several reasons. Lead counsel, Samuel Kornhauser, had not yet been admitted pro hac vice and had been awaiting

1 admission before serving the defendants, in the event that extensions or other issues arose. In
 2 addition, without waiving the attorney client privilege or work product protections, after filing the
 3 Complaint, Plaintiff's counsel were having discussions with others and were also having internal
 4 discussions regarding whether to amend the Complaint and then, serve the amended complaint.
 5 Those discussions also caused Plaintiff's counsel to delay service. (See Declaration of Samuel
 6 Kornhauser filed herewith.)

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Rule 4(m)

9 Pursuant to F. R. Civ. P. Rule 4(m), Plaintiff has 90 days from the filing of the complaint
 10 to serve defendants. If a defendant is not served within 90 days, the Court may dismiss the action
 11 without prejudice against the unserved defendant or order service be made within a specified
 12 time. If the plaintiff shows good cause for the failure, the court must extend the time for service
 13 for an appropriate period. *Morena-Perez v. Toledo-Davida* 266 F.R.D. 46, 49-50 (D. P. R. 2010)
 14 [citing *Bunn v. Gleason* 250 F.R.D. 86, 88 (D. Mass. 2008)]

15 This Court's April 18, 2022 Order, allows Plaintiff's counsel until May 3, 2022 to file a
 16 memorandum regarding a F. R. Civ. P. Rule 4(m) extension for service as to the Baltimore
 17 Orioles Defendants. Plaintiff served the Baltimore Orioles Defendants on April 25, 2022.
 18 (Exhibit 1)

19 Even if good cause for the delay is not shown, this Court can, in its discretion, extend the
 20 time for service on the defendants who were not timely served. *Borinken Towing & Salvage v.*
21 Island Commodity Brokers, LLC 2015 WL 13815457 at *2 (D. P. R. Oct. 26, 2015)

22 Factors courts consider in exercising that discretion are 1) whether the untimely served
 23 defendants were subsequently served or received actual notice of the lawsuit, 2) whether they
 24 have been prejudiced by the delay, and 3) whether Plaintiff will be severely prejudiced by a
 25 dismissal. *Id.; Soto-Ascevedo v. Padilla* 2012 WL 3679561 at *3 (D. P. R. Aug. 24, 2012)

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1 **Actual Notice to the Baltimore Orioles Defendants**

2 The two Baltimore Orioles Defendants have actual notice of this lawsuit and the claims
 3 against them. They were each personally served with a copy of the Complaint on April 25, 2022.
 4 (Group Exhibit 1)

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6 **No Prejudice to the Baltimore Orioles Defendants**

7 The Baltimore Orioles Defendants have not been prejudiced by the 14-day delay in
 8 service. The case is at the beginning stage. There have been no responses to the Complaint as of
 9 this writing. The Complaint may be, and probably will be, amended of right, before responses are
 10 due. F. R. Civ. P. Rule 42(a) Prejudice is usually construed to refer to loss of witnesses or
 11 evidence. *Riverdale Mills Corp. v. United States Department of Transportation Federal Aviation*
 12 *Administration* 225 F. R. D. 393, 395-396 (D. Mass. 2005) That has not occurred. Therefore,
 13 there is no prejudice to the Baltimore Orioles Defendants by the short, 14-day delay in service.

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15 **Prejudice to Plaintiff**

16 While it is true that the prejudice to Plaintiff is not great in having this case proceed
 17 against the 36 defendants who were timely served, if this case against the Baltimore Orioles
 18 Defendants is dismissed, a dismissal as to those defendants would require the filing of a new (the
 19 same) lawsuit against them, only to have it consolidated with this case, with concomitant
 20 duplicate and needless filings and delays, which would be a waste of time, expense and judicial
 21 resources. *Soto, supra* 2012 WL 3679561 at *3.

CONCLUSION

For the reasons set forth above, Plaintiff believes that good cause exists to not dismiss the Complaint against the two Baltimore Orioles Defendants. Plaintiff requests that the Complaint not be dismissed as to them. The Baltimore Orioles Defendants were served on April 25, 2022.

Even if good cause does not exist for the delay in serving the two Baltimore Orioles Defendants, Plaintiff requests that this Court exercise its discretion, under F. R. Civ. P. Rule 4(m), to allow the April 25, 2022 service on those defendants. There has been no prejudice to the Baltimore Orioles defendants because of the delay in service.

Respectfully submitted on May 2, 2022 in San Juan, Puerto Rico.

BAELLA & BAELLA

By: /s/ Rafael Baella-Silva

Rafael Baella-Silva
U.S.D.C. P.R. 124507

Attorneys for Plaintiff and
those similarly situated

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing

**PLAINTIFF'S RESPONSE TO ORDER TO SHOW GOOD CAUSE REGARDING
SERVICE OF PROCESS ON THE BALTIMORE ORIOLES DEFENDANTS** has been
filed electronically with the U.S. District Court, District of Puerto Rico this 2nd day of May
2022. Notice of this filing will be sent to all parties of record by operation of the Court's
electronic filing system.

By: /s/ Rafael Baella-Silva
Rafael Baella-Silva

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